


MONROE D. KIAR
INTERIM TOWN ATTORNEY
TOWN OF DAVIE
6191 SW 45th Street, Suite 6151A
Davie, Florida 33314
(954) 584-9770

TOWN ATTORNEY REPORT

DATE: May 11, 2000
FROM: Monroe D. Kiar 
RE: Litigation Update

1. **Sunrise Litigation** - As stated in the previous report, this case is at issue and trial in this case is anticipated to commence sometime after the 4th of July, 2000, probably in mid July. A mediation in this case is scheduled for May 23, 2000 and it is anticipated it will require all day. Both sides are currently conducting final discovery in preparation for trial, including deposing several possible witnesses. The undersigned has met with Mr. Serota and Mr. Serota continues to express great optimism in the outcome of this case.
2. **Transamerican Land Corp.** - The plaintiff's attorney indicated last month that she would be filing amended pleadings in this lawsuit. To date, she has not done so and we continue to await receipt of those amended pleadings on the part of the plaintiff. From prior discussions with the plaintiff's attorney, it is hoped that Davie will be dropped as a party to this lawsuit. It is the undersigned's opinion that the basis of this lawsuit is a dispute between the plaintiff, Transamerican Land Corp. and the defendant, FLR Company LLC and Madison Lakes, Inc. The defendants have filed a Counterclaim against the plaintiff and the defendants have granted an extension of time to the plaintiff to respond to the defendants' Counterclaim.
3. **Chapters 175 and 185 Funds** - The undersigned had conversations recently with Attorney Robert D. Klausner. Although both of these cases are scheduled for hearing on June 16, 2000, if they are not resolved by that time, Mr. Klausner remains optimistic that the issues in the Police Pension Plan case will be resolved and he anticipates this should be finalized shortly. With regard to the Fire Pension Plan, there remain issues which have not been resolved. Attorney Klausner has been the lead counsel in this litigation which has been pending since 1998.
4. **Coastal Carting, Ltd., Inc. v. City of Sunrise, et al** - As indicated previously, Bruce Johnson had requested of the plaintiff's attorney that it dismiss Municipal defendants, including

Davie, from the lawsuit. Although plaintiff's attorney had indicated in his discussions with Mr. Johnson that he would discuss this request with his client and would recommend dismissal of the municipalities if the Resource Recovery Board in Broward County would agree that it would not assert at the time of trial that Davie and the other cities are indispensable parties, or that the cities are responsible for any of the damages, and that the Board would agree to respond to any damage award entered by the Court. As of this date, Mr. Johnson has not yet received any word from the plaintiff's attorney. The undersigned will continue to follow up closely with Mr. Johnson in this regard.

5. **MVP Properties, Inc.** - As stated in my previous report, on April 7, 2000, the United States District Court granted in part and denied in part, the Defendant, Town of Davie's Motion to Dismiss this lawsuit. Mr. Michael Burke has filed an Answer and Affirmative Defenses on behalf of the Town of Davie in accordance with the Court's ruling on the Town's Motion to Dismiss. He has also commenced discovery procedures and propounded a series of Interrogatories to better determine what loss, if any, has been sustained by the plaintiff. He is awaiting the plaintiff's Answers to those Interrogatories. We have received word from Michael Burke that Federal Judge Zlock has scheduled a Pre-Trial Conference in this case for February 16, 2001. Attorney Burke anticipates that if this matter proceeds to trial, it will be in March or April, 2001.

6. **LDG Corp.** - As stated in an earlier report, although mediation was held on April 13, 2000, a resolution of this lawsuit was not achieved. The matter continues to be litigated and the DOT is contending the Town does not have the right to require a variance in this case or to require the property owner to make the improvements which were conditioned by the Town for granting the variance to the property owner.

7. **Orandello** - Although Mr. Orandello has indicated in the past to the former Town Attorney, Barry Webber, that he wishes to settle the Code Enforcement Lien, unfortunately, the sums mentioned by him to date, have apparently been inadequate and unacceptable to the Town. The Temporary Injunction issued by the Court restraining Mr. Orandello from selling ice cream in Davie continues to be in full force and he has made no effort since the last report to lift the Temporary Injunction.

8. **142nd Avenue, Kuegler v. Town of Davie** - This is a 1998 case. After the Court ruled in denying the Town's various motions filed by my predecessor, the Town served an Answer in February, 2000. The plaintiff has moved for Summary Judgment and it is scheduled for July, 2000. I have sent a Request to Produce to the plaintiff demanding that they produce certain documentary evidence which I believe will be helpful to our case. I am presently preparing an Opposition to the Summary Judgment.

9. **Cummings** - This is an action filed by the plaintiffs for inverse condemnation contending the Town constructed a public sidewalk over a portion of the plaintiffs' property and thereby, depriving the plaintiffs of the beneficial use and enjoyment of the property under the sidewalk. This matter has been pending since October, 1999. The Town has filed its Answer and

Affirmative Defenses to the plaintiffs' Complaint, denying plaintiffs' allegations. The Town has also commenced discovery by serving and receiving responses to its Request for Production and initial set of Interrogatories. The plaintiffs have taken no further affirmative action since the filing of their initial Complaint, other than filing a response to our discovery and a response to our Answer.

10. **Federal National Mortgage Assoc. v. Mejias and Town of Davie** - This is a Mortgage Foreclosure Complaint where the Town was named as a defendant, as it may claim an interest in the subject property by virtue of 2 recorded liens. The undersigned has filed an Answer to the Mortgage Foreclosure Complaint. No further action has been undertaken as of this date by the plaintiff since the filing of the Town's Answer.

11. **Association for Disabled Americans, Inc. v. Muvico Entertainment, LLC** - Although the Town is not officially a party to these proceedings, nevertheless, the United States Federal District Judge has entered an Order requiring the attendance at a Status Conference set for May 30, 2000, requiring the attendance of the appropriate municipal representatives from the various cities, including Davie, in which Muvico Theaters are located. The attendance by 3 members of the Town of Davie which include the undersigned, was made mandatory. We have advised the Court that we will attend unless this matter is settled prior to that date.

12. **Davie v. Discount Auto Parts, Inc.** - At the May 3, 2000 meeting, the Davie Town Council approved a resolution of the Town of Davie, Florida approving a request for mitigation of the Code Enforcement Lien in this case from \$21,750.00 to an amount of \$5,225.44, requiring that the mitigated amount be paid within 45 days of the enactment of the resolution. In accordance with the Town's direction, the undersigned and opposing counsel prepared the attached Stipulation of Settlement which was executed by the Town's attorney and by the attorney for Discount Auto Parts, Inc. and submitted to the Honorable Charles M. Greene for his approval.

13. **Davie v. Statewide Transportation & Recovery Services, Inc.** A Judgment in the amount of \$41,175.25 was obtained against Statewide Transportation & Recovery Services, Inc. Although a Deposition Duces Tecum in Aid of Execution was ordered by the Court on April 17, 2000 to be held on April 26, 2000, and despite the fact that Compass Investigations successfully served the defendant with the copy of the Order of Court, the defendant failed to appear for its deposition in contravention of the Court's Order. The undersigned has reviewed thoroughly the entire file in this case and will commence further discovery measures, if appropriate, including the possible taking of the depositions of the corporation's principal officers. Should these procedures be commenced and should the individuals subpoenaed fail to appear, we would then seek the entry of appropriate sanctions, not only against the defendant, but against the individuals as well, if applicable.

MDK/gmv
enclosure

IN THE CIRCUIT COURT FOR THE SEVENTEENTH JUDICIAL CIRCUIT
IN AND FOR BROWARD COUNTY, FLORIDA

DISCOUNT AUTO PARTS, INC.,

Appellant,

v.

Case No. CA-CE-98-012677 (12)
having been consolidated with Case No.
98-010600

THE TOWN OF DAVIE, Broward County,
Florida, A Florida Municipal Corporation,

Appellee.

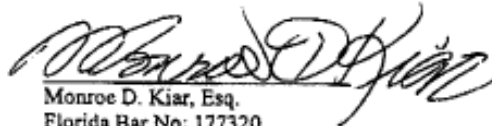
STIPULATION OF SETTLEMENT

The parties, by and through their undersigned counsel, hereby serve notice that this matter has been settled as follows:

1. The terms set forth in the Town of Davie Resolution number R2000-85 (hereafter Resolution), a copy of which is attached hereto as Exhibit "A," are hereby incorporated by reference; and
2. Each party will bear its own attorney's fees and costs with respect to this Action; and
3. This matter shall remain pending until dismissal by the Plaintiff or further order of the Court; and
4. A facsimile copy of this document or a signature thereon may be treated as an original for all purposes.



Joseph F. Summante, Jr. Esq.
Florida Bar No: 0121657
Attorney for Plaintiff



Monroe D. Kiar, Esq.
Florida Bar No: 177320
Attorney for Defendant

RESOLUTION R-2000-85

A RESOLUTION OF THE TOWN OF DAVIE, FLORIDA, APPROVING A REQUEST FOR MITIGATION OF THE CODE ENFORCEMENT LIEN IN CASE NO. 98-220 FROM \$21,750 IN AMOUNT TO \$5,225.44; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, Discount Auto Parts, Inc., requested a mitigation of Code Enforcement liens from \$21,750 to \$5,225.44; and

WHEREAS, the Town of Davie Code Compliance Division has determined that the violation of Code Sections 12-33(p)(9), 12-33(w) and 12-33(t) were corrected; and

WHEREAS, the Town of Davie Code Compliance Division staff suggested that based upon Staff recommended mitigation guidelines, the mitigation of the original lien be from \$21,750 to \$5,225.44; and

WHEREAS, Discount Auto Parts, Inc., and the Town of Davie Code Compliance Division are agreeable to such mitigation.

WHEREAS, the Town Council is agreeable to such mitigation.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF DAVIE, FLORIDA.

SECTION 1. That the certain Code Enforcement liens arising out of Case 98-220 in the amount of \$21,750, against Discount Auto Parts, Inc., are hereby mitigated in amount to \$5,225.44.

SECTION 2. That this mitigated amount of \$5,225.44 be paid to the Town within 45 days of the enactment of this Resolution. Should this amount of \$5,225.44 not be paid within the specified time the lien shall revert to the original amount of \$21,750.

SECTION 3. This resolution shall take effect immediately upon its passage and adoption.

PASSED AND ADOPTED THIS 3rd DAY OF MAY, 2000.

ATTEST:


MAYOR/COUNCIL MEMBER


TOWN CLERK

APPROVED THIS 3rd DAY OF MAY, 2000.

